

Presidential Transition Office Tasking 175 – Fence Historic Preservation

Documentation related to NEPA, historic, and cultural preservation for fence and related infrastructure construction, including waivers, findings of impact or no significant impact, records of public hearing related to fence and related infrastructure construction.

OFAM Response:

In 2007, Congress called upon the Department of Homeland Security (DHS) to construct—in the most expeditious manner possible—the infrastructure necessary to deter and prevent illegal entry on the Southwest US border, including pedestrian and vehicle fencing, roads, and virtual detection technology. Under Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as amended, the Secretary of Homeland Security (the Secretary) is required to “take such action as may be necessary to install physical barriers and roads” in order to deter illegal crossings into the United States. IIRIRA § 102(a), 8 U.S.C. § 1103 note.

U.S. Customs and Border Protection (CBP) openly scoped this project in coordination with federal and state agencies, as well as the public, to ensure that potential environmental impacts were identified and thoroughly evaluated for each project. CBP conducted extensive consultations with resource agencies and local stakeholders in order to minimize potential environmental impacts. In so doing, CBP prepared National Environmental Policy Act (NEPA) documents including:

- Biological and Cultural Resources Surveys (often coordinated with U.S. Fish and Wildlife Service (USFWS) and State Historic Preservation Officers (SHPOs))
- Categorical Exclusion (CATEX)
 - Categorizes activities that do not significantly affect the quality of the natural or human environment
- Environmental Assessments (EAs)
 - Findings of No Significant Impact (FONSI)
- Environmental Impact Statements (EISs)
- Environmental Project Information and Initiation Form (EPIIF)
 - Documents all CBP actions requiring NEPA coverage
- Record of Environmental Consideration (REC)

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- Short document that presents additional analysis of a CATEX that is identified as having a higher possibility involving extraordinary circumstances

In 2008, the Secretary of the DHS, pursuant to the authority set forth in Section 102(c) of IIRIRA, waived certain environmental and other laws. In order to continue to be environmental stewards, several processes and documentation were created to provide the same level of environmental analysis conducted prior to the waiver and still provide a potential impact on resources in the areas affected by construction. These include:

- Environmental Stewardship Plans (ESPs) comprised of the following (which can be found here <https://www.cbp.gov/about/environmental-cultural-stewardship/nepa-documents/esp-essr>):
 - Biological Resources Plan (BRPs)
 - Biological Opinions
 - Best Management Practices (BMPs)
 - Pre-construction surveys for cultural/archeological sites and biological surveys

The ESPs were published on the CBP public website. Additionally, CBP ensured an appropriate level of public involvement remained in the planning process by conducting public town halls and meetings with stakeholders (state and Federal resource agencies and Native American tribes). Project designs were posted on a public website for input.

- Environmental Stewardship Summary Report (ESSR)
 - Document which provides details of analysis, research, public meetings
- Memorandum for the Record (MFR)
 - Document indicates that adequate, NEPA-compliant environmental review and planning have been previously conducted and appropriate documentation was prepared.

In total, CBP has on record more 2,200 documents, detailed above. CBP is submitting a sampling of these documents and if needed, can provide additional documentation.

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